




FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Commission Secretary's Office 

DATE: December 19, 2012

SUBJECT: Comments on Drafts A and B of AO 2012-37
(Yamaha Motor Corporation, USA)

**Attached is a comment submitted by Bryan P. Tyson, counsel,
for Yamaha Motor Corporation, USA.**

Attachment



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**VIA FAX to Commission
Secretary at 202-208-3333
Federal Election Commission
Office of the General Counsel
999 E Street, NW
Washington, DC 20463**

*Re: Additional Comments on Drafts A and B of Advisory Opinion Request 2012-37 by
Yamaha Motor Corporation, USA*

Dear Mr. Herman:

Requestor Yamaha Motor Corporation, USA ("Yamaha") supports the Commission's Draft B in response to Advisory Opinion 2012-37 and opposes Draft A. Both drafts were issued on December 3, 2012. Following the Commission's meeting on December 6, 2012 and the chair's invitation for additional comments, Yamaha makes the following additional comments in support of Draft B.

Some Commissioners raised questions about whether other marine equipment manufacturers could also form PACs and solicit the same dealers Yamaha proposes to solicit because most of Yamaha's agreements with its dealers and service centers are non-exclusive. But it is not unusual for individuals to be part of multiple solicitable classes. As one Commissioner noted, members of multiple corporate boards often will be in more than one solicitable class. For example, in Advisory Opinion 2001-07, members of the board of the Nuclear Management Company (NMC) were also executives of corporations that already had their own SSFs. This fact that those executives could be solicited to contribute to multiple SSFs did not prohibit NMC from establishing its own SSF and soliciting employees.¹ An individual who holds stock in more than one publicly-traded company is similarly within multiple solicitable classes if a company chooses to make such a solicitation.² There is no requirement that an individual be a member of only one solicitable class in order to show affiliation with the corporation forming the SSF.

Yamaha exercises a level of selectivity in its selection of dealers that is far closer to an exclusive franchise relationship than a non-exclusive retailer arrangement. As indicated in its original submission, Yamaha carefully studies the local market before forming a full line dealer relationship and does not

¹ See also Advisory Opinions 2012-21 and 2007-12, finding no affiliation between organizations even though there was the potential or actual overlap in Board members serving in multiple entities.

² 11 C.F.R. § 114.5(g)(1).

allow more full line dealers to sell Yamaha products than that particular market can bear. This is distinctly different than the desire of a manufacturer to sell its product in as many outlets as possible.

Several practical realities of the marine products market also limit any potential for a dramatic expansion of this Commission's past decisions, even though Yamaha's agreements with most of its dealers and service centers are not exclusive. The number of marine manufacturers in the U.S. is very small (Yamaha, Mercury, Evinrude, and Suzuki are the most prominent), so even assuming that every marine manufacturer has agreements that are as intrusive as Yamaha's agreements with its dealers and service centers,³ dealers could not be in the solicitable classes of more than a handful of SSFs.

The marine product market is also unlike other markets in that marine products are not sold primarily through "big box" type stores, but rather through small- to medium-sized businesses. This difference in the market allows the type of intrusive relationship between Yamaha and its dealers, which would not be possible if Yamaha's marine products were marketed through large corporate entities. The reality is that most dealers have to sell multiple lines because being an exclusive dealer is not economically feasible in many parts of the country.

Another feature of the marine products market is that a lot of dealers self-identify primarily with one manufacturer. While those dealers may carry more than one manufacturer's products, it is unlikely that those manufacturers will choose to participate in more than one SSF because they primarily sell the products of one manufacturer.

Thus, when considered with the unique marine products market and the Commission's precedent, Draft A focuses too much on the non-exclusive nature of Yamaha's relationship with its dealers and service centers. Draft B properly focuses on the intrusive nature of the Yamaha's governance relationships with its dealers and service centers.

For all the reasons outlined in the original request, its comment letter dated December 5, and this additional comment letter, Yamaha urges the Commission to issue Draft B in response to Advisory Opinion Request 2012-37.

Respectfully submitted,



Bryan P. Tyson
Counsel for Yamaha Motor Corporation, USA

cc: Office of General Counsel via fax to 202-219-3923

³ Yamaha is not aware of whether other marine product manufacturers require the same level of control over management personnel and financial reporting required by its dealer and service center agreements.